



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

July 31, 2002

Bryon K. Huffman
Airports Division Manager
Federal Aviation Administration
222 West 7th Avenue, Stop #14
Anchorage, Alaska 99513-7587

Dear Mr. Huffman:

Pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), Federal agencies are required to consult with the National Marine Fisheries Service (NMFS) on any action that may result in adverse effects to essential fish habitat (EFH). The Federal Aviation Administration (FAA) requested the Alaska Region of NMFS make a finding that FAA's current environmental review procedures as described in FAA Order 5050.4(A), including the National Environmental Policy Act (NEPA) process, can be used to meet the consultation requirements of the MSFCMA and EFH Final Rule. In accordance with 50 CFR 600.920 (c), FAA has designated the Alaska Department of Transportation and Public Facilities (ADOT) as the non-Federal representative to conduct EFH consultation and prepare EFH Assessments. To streamline environmental review requirements, FAA, ADOT, and NMFS staff have worked cooperatively to incorporate EFH consultation into the NEPA process within the FAA environmental review procedures.

Background

The EFH regulations at 50 CFR 600.920(f) enable NMFS to make a finding that an existing consultation or environmental review procedure can be used to satisfy the MSFCMA consultation requirements if the procedure meets the following criteria: 1) the existing process must provide NMFS with timely notification of actions that may adversely affect EFH; 2) notification must include an assessment of the impacts of the proposed action on EFH that meets the requirements for EFH Assessments discussed in section 600.920(e); and 3) NMFS must make a finding pursuant to 50 CFR 600.920(f) (3) that the process satisfies the requirements of sections 305(b) (2) and 305(b) (4) of the MSFCMA.

This finding outlines EFH consultation procedures that will be used for FAA/ADOT aviation projects in Alaska. If at any point



in the process NMFS determines that the project would result in substantial adverse effects to EFH or that additional information or analysis is needed, expanded consultation procedures pursuant to 50 CFR 600.920(i) of the EFH Final Rule will be implemented instead of the procedures outlined in this finding. Any of the parties may request expanded consultation at any point in the process. The parties will determine how best to implement expanded consultation based on the specifics of the project. During expanded consultation, additional information may be required, a site visit may be necessary, and conservation recommendations will need to be addressed. However, to the extent practicable, FAA environmental procedures will be utilized to fulfill the requirements of expanded consultation.

Finding

NMFS finds that the existing environmental review procedures described in FAA Order 5050.4(A) for state sponsored aviation projects in Alaska can be used to satisfy the EFH consultation requirements of the MSFCMA provided that the following steps are adhered to:

Timely Notification

ADOT will determine if a proposed action may adversely affect EFH. If ADOT determines that a proposed action will adversely affect EFH, it must provide NMFS with timely notification (50 CFR 600.920(f)(1)(i)). NMFS should have at least 60 days notice prior to a final decision on an action. Additionally, EFH regulations allow NMFS and the action agency to agree to use shorter time frames if they allow sufficient time for NMFS to develop EFH Conservation Recommendations.

Should a proposed action be determined to adversely affect EFH, ADOT will initiate informal discussions with NMFS on possible EFH Conservation Recommendations. Abbreviated consultation begins when NMFS receives an EFH assessment. This will normally coincide with the receipt of the draft environmental document, and in some cases preliminary draft environmental document. Transmittal of the draft NEPA document to NMFS will be considered "Submittal of the EFH Assessment" under 50 CFR 600.920 (h)(2).

EFH Assessment

ADOT will include the EFH Assessment in the draft NEPA document with the information as outlined in 50 CFR 600.920(e), including a description of the proposed action, an analysis of the potential adverse effects of the action on EFH and the managed species, ADOT's conclusions regarding the effects of the action

on EFH, and proposed mitigation, if applicable. The EFH Assessment information will be clearly identified and incorporated in the draft NEPA document as part of the fish and wildlife section of the environmental consequences chapter, or as a separate appendix to the document. Additional information, which may be appropriate to include in an EFH Assessment, is listed in 50 CFR 600.920(e)(4).

In addition, if an EFH Assessment was prepared for a similar or related action, with similar adverse impacts to EFH in the same geographic area or similar ecological setting, the NEPA documents may incorporate that EFH Assessment by reference supplemented with any relevant new project-specific information (50 CFR 600.920 [e][5]). The referenced document must be provided to NMFS with the draft NEPA document.

Coordination

To the extent practicable, ADOT and NMFS should coordinate throughout the NEPA and EFH consultation process regarding possible adverse effects to EFH and potential measures for avoiding or mitigating those effects to ensure any EFH Conservation Recommendations that NMFS may recommend are feasible and within FAA's authority to control and implement. NMFS will provide EFH Conservation Recommendations to ADOT within the public comment period for the draft EIS or within 30 days of receiving a draft EA. If ADOT/FAA determines that a project will not adversely affect EFH and NMFS disagrees with that determination, NMFS is required to provide ADOT/FAA with EFH Conservation Recommendations.

Pursuant to section 305(b)(4)(B) of the MSFCMA and 50 CFR 600.920(k), a Federal action agency must provide a detailed response to NMFS in writing within 30 days after receiving EFH Conservation Recommendations. ADOT will provide this response on behalf of FAA; however, FAA remains ultimately responsible for EFH compliance. ADOT must respond to EFH Conservation Recommendations received from NMFS even if ADOT has determined that the project will not adversely affect EFH. ADOT's response will include a description of measures proposed for avoiding, mitigating, or offsetting the impact of the activity on EFH. In the case of a response that is inconsistent with the EFH Conservation Recommendations, the response must explain the reasons for not following the recommendations, including the scientific justification for any disagreements with NMFS over the anticipated effects of the proposed action and the measures needed to avoid, minimize, mitigate, or offset such effects. ADOT must provide its response at least ten days prior to final approval of the action if the response is inconsistent with any

of NMFS's EFH Conservation Recommendations, unless NMFS and ADOT agree to use an alternative time frame for the response. In the event that timing necessitates a delay, ADOT may provide an interim response, stating that ADOT has not yet made a final decision on NMFS's recommendations, and that ADOT will send a final response to NMFS prior to its final decision on the action.

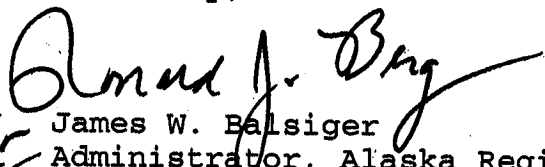
Higher Level Review

Pursuant to 50 CFR 600.920(k)(2), if ADOT's decision is inconsistent with a NMFS EFH Conservation Recommendation, NMFS may request a meeting with ADOT and FAA to discuss the proposed action and seek opportunities to try to resolve any disagreements. Efforts to resolve any differences should begin at the regional level of both FAA and NMFS.

Conclusion

If you agree with the procedures described above, please respond by letter indicating your concurrence. Please contact Ms. Jeanne L. Hanson of my staff at (907) 271-3029, if you have any questions or wish to discuss this finding.

Sincerely,


James W. Balsiger
Administrator, Alaska Region

cc: Bill Ballard - ADOT, Juneau